

Ca. Sept. 1984

IV-1

A SORRY DAY IN AMERICAN HISTORY

(incomplete)

Since Peter Rodino began hearings on immigration reform, more than twelve years ago, the issue has had as many lives and deaths as the aphoristic cat. Its present incarnation, the ~~somewhat~~ Simpson-Mazzoli Bill, has been interred and resurrected several times this year, and presently waits in a kind of purgatory, technically known as a conference committee; ~~since~~ neither Republicans nor Democrats, House nor Senate, dares do anything to offend anyone till after the election.

When the issue is joined again, ~~as it will certainly be~~ it is to be hoped the debate will go beyond the two aspects of Simpson-Mazzoli which have so far monopolized public attention: amnesty and employer sanctions. There is another aspect, H.R. 1510, particularly in ~~the House~~/the House version of the bill, ~~at least~~ every bit as deserving of scrutiny: the extraordinary extent to which ~~the~~ one group of employers, agribusinessmen, are singled out for preferential treatment, and, to the same extent, agricultural laborers are adversely affected.

~~When~~ If the debate were extended to this question of equal protection, a bitter irony would ~~almost certainly~~ come to light. The employers uniquely succored by the proposed legislation are the employers primarily responsible for the immigration crisis to which the legislation is supposedly addressed. Illegal aliens do not lend themselves to census-type statistics, but ~~most~~ a majority certainly came from Mexico, and of those a majority almost certainly came to work in Southwestern agriculture, where growers and their mayordomos have always operated as a law unto themselves in labor matters.

Any immigration reform which ignores this history will fail to solve the problem. Simpson-Mazzoli, in its present form, not only ignores history -- it ~~exposes~~ would reward and encourage those who created the problem, and ~~themselves could hardly fail to~~ would virtually guarantee an increase in illegal immigration.

II

In the ~~House version of~~ Senate version of Simpson-Mazzoli, amnesty for illegal entrants -- "legalization," as it is called in the bill -- is a rather complex two-tiered arrangement, with no amnesty for anyone who entered the country illegally since January 1, 1980. The House of Representatives version would forgive every illegal alien who had lived continuously in the U.S. since January 1, 1982. Some critics think this provision too forgiving, and the debate is on the question of how long an illegal alien should have resided in this country before earning justice in rewarding those who have broken the law, while those who have tried to go through legal immigration channels are trapped in a quota system which may exclude them as long as they live.

The critics and the debate miss the crucial point. Simpson-Mazzoli does not forgive scofflaw workers so much as it forgives scofflaw employers. An illegal alien does not escape detection for three years, or five years, or any period beyond a few hours or days, by huddling alone in some dark alley. He has to be harbored by someone. That someone might be a friend or relative, but it is most likely to be an employer, and the employer of first resort is most likely to be a grower. To be sure, undocumented workers who begin in Southwestern agriculture often drift away to live in urban barrios and work as dishwashers or whatever. But they will have a difficult time proving continuous residence for three years, five years, or whatever "legalization" period House and Senate conferees agree upon. The illegal aliens most likely to be amnestied/who have been harbored by a grower or farm labor contractor the entire time -- working out of public view by day, perhaps sleeping in a barn or under the trees at night. Employers of undocumented workers on such a long-term basis must have known what they were doing. Simpson-Mazzoli will reward them for their special persistence in harboring illegal aliens by enabling them to keep those same workers under the same conditions, in the same barns, under the same trees -- but, now, with no worry that the Border Patrol can ever take them away.

~~In this respect, at least,~~ Simpson-Mazzoli does not ~~it~~ openly single out agricultural employers for preferential treatment in this respect. They benefit disproportionately only because they have used illegal workers disproportionately over the years; operators of ^{garment} sweatshops, and other ^{and other} low wage businesses, ~~etc.~~, will also benefit to the extent they have succeeded in harboring illegal aliens for the requisite length of time.

In other respects, Simpson-Mazzoli openly and directly caters to the very growers who have used illegal aliens most notoriously. Both House and Senate versions would create a 3-year "transitional agricultural labor program" to "assist agricultural employers in shifting from the employment of unauthorized aliens..." During the first year, growers could continue using all the illegal entrants ~~aliens~~/they had "historically" used, the only difference being that these workers would now be given "work permits." In year two, the number of work permits would be reduced by one-third; in year three, by two-thirds; by the fourth year, growers would be expected to find workers through other channels.

In ~~a~~ a piece of legislation supposedly intended to control illegal immigration, the inclusion of this "transitional" program ~~examined by the~~ is simply bizarre. It is an open invitation to the use of more, not fewer, undocumented workers. Growers have every incentive to take on as many illegal aliens as possible this year. The government will then guarantee them that same number next year. What matter if these workers have a scrap of paper called a "work permit" or no documentation at all? They will be exactly the same type of workers, laboring under exactly the same type of conditions. R In case anyone needs to be told the obvious, employers do not use illegal aliens because they have to, but because they like to. ^{living and working} Illegals are willing to accept conditions which are unacceptable to Americans -- conditions often tantamount to peonage. In fact, most illegals ^{are probably from} ~~were from~~ Mexico's peon class. In the past, there has been something of a disincentive to their use in that they might possibly be rounded up and deported at an awkward time for the employer: say, just as the peaches or melons were getting ripe.

Section 211(c)(1) of the Simpson-Mazzoli Bill would effectively remove that disincentive and give Southwestern growers every reason to indulge their fondness for peon labor to the uttermost.

III.

If anyone were to point out that Simpson-Mazzoli's concessions to agribusiness have no counterpart in any other industry, the bill's sponsors would probably claim ~~say~~/the concessions are balanced by the concept of "employer sanctions." ~~xxxxxxx~~ Over ~~first time in the history of the United States~~ ago, ~~xxxx~~ thirty years, the late Ernesto Galarza, and others in the farm labor movement, began arguing that the ~~xxx~~ surest way of slowing the traffic in "wetbacks" (as they were known at the time) was to make it a crime to hire them. Proposals to this end were always killed by the agribusiness lobby. However, It survives, so far, in Simpson-Mazzoli. /A reading of the bill, as amended, reveals that sanctions resemble those under the old bracero system, which Galarza described as "six lashes laid on with a half-cooked noodle."

In the first place, Simpson-Mazzoli would make it ~~illegal~~ ~~unlawful~~ to hire an unauthorized alien only if it were done knowingly. The 237 members of the House who are not lawyers may have thought this an effective sanction, but the 198 members with law degrees should have ~~known~~ been well aware it would be almost impossible for the Immigration and Naturalization Service to prove foreknowledge.

In the House version of the bill, ~~Secondly~~/if INS did catch an employer in flagrante delicto, and could prove foreknowledge, the penalty for a first offense would be nothing but a "warning." In the more unlikely event of a second set of the same circumstances, the fine could not be more than \$1,000 ~~per~~ illegal worker. In the even more unlikely event of a third proven offense, the maximum fine would be doubled. In the Senate version, a fourth proven offense could result in criminal penalties -- i.e., prison. At the behest of ~~the~~ its Committee on Agriculture, the House dropped any reference to criminal sanctions. Since the Senate, at this point, is the more employer-oriented of the two houses, it seems doubtful the sterner version of employer sanctions will

emerge from the conference committee.

as far as sanctions of agricultural employers are concerned.

The discussion is largely academic, / A little-noticed proviso in both House and Senate versions of Simpson-Mazzoli makes it extremely unlikely that growers ^{ever} who employ illegal aliens will/be brought to account. ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

Under existing immigration law, the Border Patrol may treat farms and ranches as they do public roads and other outdoor places: they may enter at reasonable ^{without advance notice,} times, / for the purpose of questioning persons as to their immigration status.

Under Simpson-Mazzoli, the Border Patrol could/enter a ^{not} ~~farm~~ ~~only~~ place of agricultural employment ~~only~~ "without the consent of the owner (or agent thereof) or a properly executed warrant...." Such warrants would not be easy to come by in rural areas; even if they could be, the likelihood would be great that the grower in question would learn, by the "grapevine", what was pending, and take the appropriate measures.

Thus, in addition to every thing else, Simpson-Mazzoli would enable growers to hire illegal aliens with less likelihood of detection than ever before. But the appetite of Southwestern planters for labor of the peon class was still not sated. They wanted more. ~~To help them get more, they somehow prevailed on a~~ ^{Democratic Congressman} ~~bright, young, liberal/ Democrat from California.~~ Their lobbyists prepared an amendment to Simpson-Mazzoli ~~xxxxxx~~ calling for a Mexican farm labor ~~xxxxxxx~~ system more massive than anything since the old bracero program -- but without even the paper-thin protections of that program. To carry this amendment, they somehow prevailed on a bright, young, liberal Democratic Congressman from California.

IV. V.

It is equally mysterious that the Panetta Amendment to H.R. 1510 was taken seriously. The bracero program was so odious in its scandals and corruption, so devastating in its effects on domestic farm workers and small business in bracero-dominated areas, that Congress had to let it die/ in 1964. Some 54 members of Congress who were there twenty years ago are still there; ~~xxx~~ 39 are /from the North. But it is as though the bracero program never existed.

~~xx~~ The quintessence of the Panetta ~~amendment~~ plan is precisely the same as that of the bracero system. Mexican contract laborers are to be authorized if "domestic workers who are able, willing, and qualified" are not "available," and if the wages and working conditions provided to the Mexican laborers "do not adversely affect the wages and working conditions of workers in the United States similarly employed." These are, ~~xxx~~ of course, contradictions in terms. All growers have to do is offer conditions which are unacceptable to Americans, and then ~~among guarantees of~~ government guarantees then no every job will be filled by a Mexican. Since there are /"workers in the United States similarly employed," there can be no adverse effect on them. A/closed self-fulfilling prophecy, system, feeding upon itself; ~~the existence of~~ an employer's "dream of heaven," in Carey McWilliams' phrase.

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In its quintessential aspects, the Panetta proposal is on all fours with the old bracero program. In other respects, it is worse. Panetta workers would have none of the contractual guarantees of braceros; ~~paper thin as those guarantees may have been~~ the right to elect their own representatives; "hygienic lodgings"; three meals a day at minimal cost; nonoccupational health insurance; tools and equipment at employer expense; guarantee of ~~xxxx~~ at least 64 hours work in each 2-week period; guarantee of a minimum wage during a learning period; freedom to shop in places other than a company store; etc., etc.

These protections and freedoms were often violated by bracero-users, but the fact they existed, even on paper, made it possible for critics of the system, like

Ernesto Galzarza, to cry out against the abuses, mobilize public opinion, demand Congressional ^{action} investigations. What is more, administration of the bracero system rested with the Department of Labor, which has a mandate to preserve and advance the interests of American workers, uncertain as it may sometimes heed the trumpet call. The Panetta program would be administered by the Attorney General, who has no such experience or mandate.

~~The~~ Friends of the Panetta plan claim it would be an improvement over the one bracero system in ~~this~~ ^{up to} respect. The Attorney General would designate "not more than ten agricultural employment regions within the United States." Panetta workers would be authorized to work only within one of these regions -- but in theory they would be able to move about, within that area, from employer to employer. This, according to Panetta, would ensure against exploitation. A worker would have no ~~guarantee~~ contractual guarantee of wages, hours, or anything else, but if he were abused too egregiously, he could supposedly move on. Many of the media found this the only aspect of the Panetta amendment worth mentioning, and depicted the plan as one of liberation. *Insert*

One has to be very ~~ix~~ ingenuous or very disingenuous about the farm labor market, ~~in general~~, and about Mexican farm labor in particular, to view the Panetta plan as anything but legalized peonage. A worker who walked away from an employer would assuredly never work for him again, and growers would assuredly form regional networks of communication to blacklist complainers and "deserters." The Panetta amendment, ^{naturally,} of course, contains no prohibition of blacklisting. ~~End~~

schemes, But in an even more fundamental way, the Panetta program, like all Mexican labor programs, could not, ^{be other than} fail to be, in practice, a captive worker system. A discontented Panetta worker who moved on to a grower who had not been approved by the Attorney General for participation in the program, or who left agriculture, or who wandered across the boundary line of his predesignated region, would become instantly deportable. Mexican peons do not understand English; they know nothing of U.S. law. To

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The Panetta plan is also on all fours with the bracero system, and foreign contract labor schemes ~~ix~~ generally, in that the workers are shipped back and forth at the pleasure of employers, with no possibility of becoming permanent residents or citizens of the country which uses their services. They are ~~xxx~~ males, unaccompanied by families, with all that implies in terms of social dissolution. (The Panetta Amendment provides that "a spouse or child" may be granted the same status as the breadwinner -- but only if such spouse or child will also perform agricultural labor on the same basis, and only if the employer There might be a handful of petitions, but not many. ^{since} petitions for it. /Southwestern planters learned, long ago, that all-male gangs are easier to house, transport, and control than family groups.)

~~In many important respects, then,~~ ^{then} the Panetta proposal ~~ix~~ ^{all} would revive the major economic and social evils of the bracero system. In other respects, it would be worse. ~~than xxxxxxx~~

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Some even adopted Panetta's Newspeak and called it a "guest worker program" -- as if these laborers were to be put up in the spare bedrooms of farm houses and asked how they liked their eggs every morning.

~~to~~ suppose they are going to penetrate the arcane language of the Panetta Amendment; to imagine they will know who is an eligible employer within their region, or what are the boundaries of their region; to call this a program with "freedom of choice" is so preposterous as scarcely to warrant a rejoinder.

It is ~~xx~~ strange that Leon Panetta lent his good name to such a scheme; the U.S. House of Representatives ~~xxxxx June 14, 1984~~ stranger than ~~that Congress~~ dignified it with a serious hearing; strangest of all that that body, representing the people of the United States, controlled by the Democratic Party by a margin of more than ~~312~~ 100 votes, ~~passed~~ the Panetta Amendment, and on the evening of June 20, 1984, ~~passed~~ ^{reaffirmed its action by passing} the Simpson-Mazzoli bill as amended by the Panetta program.

VI.

The Panetta Amendment made strange bedfellows. ~~Without exception,~~ The self-styled free marketers ^{demonstrated} ~~revealed, that their~~ more starkly than is their usual custom, that their notion of freedom from government interference is that the advantaged shall ~~not only~~ ^{free} be allowed to exploit the disadvantaged, without hindrance, ^{and} but shall be subsidized by the government in the bargain. Jack Kemp, Philip Gramm, ~~Trent~~ ^{Delbert Latta, Hyde, Crane} Lott, ~~Nowt~~ ^{Robert} Gringrich -- without a single exception, ^{those who} they and ^{talk loudest about "market forces" suggested} their kind voted for government-licensed peonage, ^{voted for nullification of such forces in the farm labor market.}

Almost as solidly, representatives from the "farm belt," of both parties, voted for a plan which had nothing to do with wheat, corn, soybeans, or other products of their region. They were apparently ^{mesmerized} ~~bedazzled~~ by claims that "The benefit of this amendment goes most forcefully to the very small farmer," which Panetta defined as someone with less than 500 acres. No one pointed out that an acre of irrigated orchard or vineyard in California is worth ^{more than} ten acres of dry farm ~~land~~ in Nebraska or Kansas. No one pointed out that cheap agricultural labor is a curse to legitimate working farmers; it devalues their own labor, and has driven them almost out of existence in ~~California~~ the Southwest, as it did in the Southeast long ago.

~~Party divisions, loyalties, and discipline.~~ The Panetta Amendment make an interesting study in ^{party} ~~lo~~ divisions, loyalties, and discipline.
~~Word~~ Word had evidently gone out from the White House that the Administration looked on the scheme favorably. Republicans fell into line overwhelmingly, 138-15; defectors were almost all from the Northeast. House Democrats voted emphatically against their colleague, Panetta, 90-157. One might think the Democrats who voted for the new peonage were Southerners, and the passage of the Panetta Amendment thus represented another victory for the coalition of "boll weevils" and Republicans which gave Reagan virtual carte blanche early in his administration.

Not quite. Of the 90 Democratic votes for Panetta, 57 were from South of the Mason-Dixon line -- but 43 Democrats from those states voted against the Amendment. Democrats from the North and West were by no means unified: though most voted against it, 33 voted for the Panetta Amendment. And 18 Northern Democrats did not bother to vote at all, compared to only 3 Southern Democrats and 13 Republicans.

Therefore, passage of the Panetta plan may properly be attributed as much to defections from the liberal camp as to a coalition between Republicans and conservative Democrats. If 29 votes had switched, the Panetta Amendment would have lost. Where might these 29 votes have come from? One, for example, ^{could} ~~might~~ have come from Tom Foley, majority whip, third most prestigious Democrat in the House, behind Tip O'Neill and Jim Wright. Foley represents a district in Eastern Washington where ^{none of} grain is grown, but ~~not~~ the labor-intensive crops which anyone has ever ^{dared} ~~claimed~~ "require" imported workers. If Foley had voted nay, instead of aye, he might have served as ^{role-model, as the saying is} ~~an inspiration to other~~ ~~liberal~~ Democrats evidently confused about the interests of their constituents: Albert Gore, Jr., of Tennessee, currently running for the Senate seat being vacated by Howard Baker; Tom Harkin of Iowa, also running for the Senate; Bob Traxler of Michigan, with its high rate of unemployment; two of ~~West Virginia's~~ four Democrats from West Virginia, with its even higher unemployment. Six California Democrats voted for Panetta, including Tony Coelho, chairman of the Democratic Congressional Campaign Committee for the entire country. Five Pennsylvania Democrats did likewise, including Joseph Gaydos, one of only six members in the whole

~~six members in the whole~~ House to mention any connection with organized labor in his official biography.

There were more than enough votes from self-styled liberals to have ~~defeated~~ defeated Panetta -- especially if those who did not consider the issue important enough to vote at all had been present on the night of June 14, 1984, and had voted nay. A liberal Democratic Congresswoman from New York, quite obscure at the time, did not vote. Someone, some time, might ask Geraldine Ferraro for an explanation. James Scheuer, Thomas Downey, Robert Garcia, all very liberal, all from New York, did not vote. ~~Most curiously, six~~ of Massachusetts' supposedly super-liberal ten-member Democratic delegation did not vote.

Sometimes, in politics, one gets a second chance. On June 20, members of ~~the~~ the House of Representatives had a second opportunity to vote against the Panetta plan when H.R. 1510 came to a final vote. Prior to the Amendment, there was no clearcut position a "good liberal" could be expected to take on H.R. 1510. Hispanic groups were generally very much opposed to it; Southwestern Democrats, who had to consider the Hispanic vote, ~~teded~~ tended to be against it. The AFL-CIO was in favor of it; Northeastern Democrats were generally in favor ~~if~~ of it, except some of those from cities with large Hispanic populations.

so fundamentally it should thereafter have been called Simpson-Mazzoli-Panetta. The Panetta Amendment changed the original bill ~~fundamentally~~. ~~It was as if a crime control bill were amended to permit discrimination in housing or employment.~~ To the controversies under which Simpson-Mazzoli had always labored, there was now added a sanctioned form of peonage. The confusion of ~~the~~ "good liberals" should ~~be~~ have been cleared up. It is difficult to see how any of them could ~~have~~ vote for peonage. Yet some managed this feat -- enough to make all the difference.

H.R. 1510, as amended, passed by 5 votes, 216-211, with 8 not voting. There were many Republican ~~switches~~, from the 138 who voted for Panetta to 91 who voted for Simpson-Mazzoli-Panetta. ~~Obviously, the~~ Some didn't care for amnesty;

more, probably, didn't care for employer sanctions. Altogether, 73 Republicans voted against H R. 1510, compared to only 15 who had voted (see II-14) against the Panetta Amendment. However, 91 Republicans voted for H.R. 1510 -- 18 more than voted against it -- and since the final margin was only 5 voted, it might be said ~~that~~ the GOP could claim credit, if that is the word, for the bill's passage.

But scrutiny of Democratic votes is even more instructive. ~~Between~~ Far more Democrats voted for Simpson-Mazzoli-Panetta than had voted for Panetta ~~alone~~: 125 compared to 90. There were far fewer "Not Voting": 5 as against 21. As before, ~~the~~ liberals might like to believe it was "boll weevils" who made the difference, but such was not the case. Fewer Democrats from Southern and Border states voted for Simpson-Mazzoli-Panetta than had voted for Panetta alone: 55 vs. 58. Far more Northern and Western Democrats shifted ~~to an aye vote on Simpson-Mazzoli-Panetta from an aye vote on~~ ~~from a nay vote on Panetta to a nay vote on~~ Simpson-Mazzoli-Panetta: 69 vs. ~~41~~ 32. This swing of 37 votes, more than the actions of any other sector of the House, accounts for the passage of H.R. 1510 as amended by the new braceroism.

Who were these 37 Northern and Western Democrats who voted against the Panetta scheme when it stood ~~unadorned~~ in full view, unadorned, but voted for it when it was concealed deep within a broader bill? They included Dan Rostenkowski, Chairman of Ways and Means, and four other Illinois liberals; Les Aspin, Robert Kastenmeier, and the entire Democratic delegation from Wisconsin; Dingell and Levin of Michigan; nine liberals from New York, four from New Jersey, four from Ohio, three from Pennsylvania, seven from Massachusetts' "super-liberal" delegation.

Why? Party discipline, most likely. The word evidently went out from the Democratic leadership: "Let's win one for Peter." Although Congressman Rodino's name does not appear on H.R. 1510, he labored ~~on~~ tirelessly on immigration control and the concepts of worker amnesty and employer sanctions owe more to him than to anyone else. and reform for twelve years, / He has served in the House for ~~36~~ 36 years -- longer than O'Neill, Wright, Foley, Rostenkowski. He has no natural enemies, ~~but~~ ~~he~~ has enjoyed few major victories. The Nixon impeachment hearings, which he chaired impeccably, came to ~~a dead end~~ ~~nothing~~ when Nixon resigned. ~~So~~ here was a chance for him to ~~call~~ ~~pull~~ in some

chits. His handiwork, H.R. 1519, was flawed by the Panetta Amendment, which he had/ spoken & voted against. But old political pros are used to settling for half a loaf. Besides, there was the possibility that the peonage plan would be removed in conference. So, let's win one for Peterxxx, and who was it that said party loyalty sometimes demands too much?

VII.

~~During the conference on the Panetta Amendment, from the~~ Henry Gonzalez (D., Tex.), dean of all Congressional Hispanics, had this to say about the Panetta Amendment:

Strong words in any universe of discourse. Especially strong in the U.S. Congress, with its traditions of collegial courtesy and verbal minuets. Stronger and more unusual still, coming from a 23-year veteran of the House, a man well aware of the axiom "to get along, you have to go along." Gonzalez' extraordinary bluntness should have alerted ~~him~~ his colleagues to the fact they were about to vote on an extraordinary issue. In case they did not hear, or did not understand what they heard on June 14, they had a chance to vote again on June 20. Both times, a majority voted for a "rent-a-slave program."

As this is written, it remains to be seen whether the Panetta Amendment will survive the conference between members of the House and Senate Judiciary Committees. Romano Mazzoli (D., Kentucky), head of the House delegation, is no friend of the Panetta Amendment. But Dan Lungren, ranking Republican on the House Immigration Subcommittee, representing Orange County, California, is one of the Amendment's more voluble supporters. The Senate delegation will be dominated by Republicans, led by Alan Simpson (R., Wyoming). The ~~Senate~~ question of a Mexican farm labor program in version of Simpson-Mazzoli. did not come up on the Senate floor. But Republicans, taking their lead from the proprietor of the Oval Ranch, ~~pancher~~ in the White House, are generally enthusiastic about Mexican farm labor programs, as indicated by the margin of nearly ten to one they gave the Panetta

Amendment in the House.

The possibilities are several. ~~The Panetta Amendment may be quietly buried in~~
~~conference committee. In theory, it could be revived again when the committee report~~
~~reaches the respective houses, but that would be unusual.~~ The conference committee,
~~on immigration~~ or either of the ~~two~~ houses of Congress, may fail to com-
plete work on immigration this year, in which case the whole issue would be thrown
into the 99th Congress which will be elected November 6.